

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.2066 OF 2005

IN

SUIT NO.516 OF 1975

M/s.Normandie Co-op.Housing Society Ltd. ...Plaintiff.

vs.

Mahendra Builders & others. ...Defendants.

Mr.A.M.Jain i/b. M/s.Khaitan & Jayakar, for Plaintiff.

Mr.N.R.Modi with R.C.Kanwala i/b. M/s.Rustamji & Ginwala, for
Defendants 6 and 7.

CORAM: D.K.DESHMUKH, J.

DATED: 14th December, 2006..

P.C.:-

1. This notice of motion taken out by the plaintiff for restoration of the suit is liable to be dismissed for more than one reason. Admitted position is that the witness of the plaintiff was under examination in chief. He remained absent twice before the Court. The

Court in order to protect the interest of the plaintiff, adjourned the matter twice. On 7.7.2005 when the matter was before the Court again for recording of evidence neither the plaintiff nor his lawyer nor his witnesses were present. Therefore, the Court dismissed the suit for non prosecution. In the affidavit filed in support of notice of motion the only reason given is that the Advocate appearing for plaintiff was busy before the another Court, therefore, he could not remain present. No reason is given as to why if the lawyer was not in a position to remain present before the Court where the matter was to appear, an alternate arrangement was not made either for conducting the matter or for mentioning the matter . No explanation has been given as to why the plaintiff was not present. No explanation is given as to why the witness was not present.

2. There are eight defendants in the suit and the contesting defendants are defendant nos.6 and 8, but to the notice of motion only defendant nos. 1 to 5 have been joined. The contesting defendant nos. 6 and 8 are omitted. I have gone through the order sheet of the suit. It shows that the plaintiff has been consistently negligent in prosecuting the suit. Really speaking the order dismissing the suit for default was the order made in the interest of justice. Taking out such a notice of motion specially the notice of motion without joining all the defendants as party to the notice of motion amounts to abuse of

process of the Court. Obviously, therefore, the notice of motion is liable to be dismissed, but exemplary costs are liable to be awarded against the plaintiff for abusing the process of the Court and wasting the Court's time for such frivolous litigation. The notice of motion is disposed of. The plaintiff is directed to pay as and by way of cost of this notice of Rs.25,000/- to the defendants.
